

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHANE WALIEZER,

Plaintiff,

v.

ADAM FORTNEY, *et al.*,

Defendants.

CASE NO. 2:21-cv-01100-RAJ-JRC

ORDER DENYING
APPOINTMENT OF COUNSEL

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. Before the Court is plaintiff's motion to appoint counsel. Dkt. 6.

Unlike in a criminal case, in a § 1983 action, there is no constitutional right to appointed counsel, and whether to appoint counsel is within this Court's discretion. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). Appointment of counsel for indigent civil litigants under 28 U.S.C. § 1915(e)(1) requires "exceptional circumstances." *See Rand v. Roland*, 113 F.3d 1520, 1525 (9th

1 Cir. 1997) (citing former 28 U.S.C. § 1915(d) (1996)), *overruled on other grounds*, 154 F.3d 952
2 (1998). To decide whether exceptional circumstances exist, the Court must evaluate “both ‘the
3 likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro*
4 *se* in light of the complexity of the legal issues involved.’” *Wilborn v. Escalderon*, 789 F.2d
5 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).
6 “Neither of these factors is dispositive and both must be viewed together[.]” *Id.*

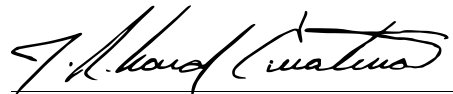
7 Plaintiff does not make any argument that he has shown the exceptional circumstances
8 meriting the appointment of counsel in this matter, other than citing his indigency.

9 Moreover, although the Court has found that solely for screening purposes, his complaint
10 is adequate to merit an order directing service on defendants, the Court is unable to determine
11 that there is a likelihood of success on the merits, at this early stage in the proceedings.

12 Plaintiff’s complaint presents a claim of excessive force used to accomplish his arrest, and he
13 appears to be capable of adequately articulating his claim.

14 Plaintiff’s motion to appoint counsel (Dkt. 6) is therefore **DENIED** without prejudice.

15 Dated this 14th day of September, 2021.

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19 J. Richard Creatura
20 Chief United States Magistrate Judge
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